

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-0098V

Filed: 1 December 2009

* * * * *
APRIL SANDERS and SCOTT SANDERS, *
Parents and Next of Kin to MATHEW *
DYLAN SANDERS, *
*
Petitioners, *
*
v. *
*
SECRETARY OF HEALTH AND *
HUMAN SERVICES, *
*
Respondent. *

* * * * *

Andrew Donald Downing, Esq., Rhodes, Hieronymus, Jones, Tucker & Gable, PLLC, Tulsa, Oklahoma, for Petitioner;
Debra A. Filteau Begley, Esq., United States Department of Justice, Washington, District of Columbia, for Respondent.

UNPUBLISHED DECISION¹

ABELL, Special Master.

On 20 November 2009, the parties filed a joint stipulation addressing the alleged vaccine-related injuries of Mathew Dylan Sanders, son of the Petitioners, which the Court accepts as reasonable, just and proper, with minor emendations, (in brackets), and which states as follows:

¹ Petitioners are reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4) and Vaccine Rule 18(b), a petitioner has 14 days from the date of this ruling within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" may be made available to the public per the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

1. On behalf of their son, Mathew Dylan Sanders (“Mathew”), Petitioners filed a Petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 through 34 (the “Vaccine Program”). The Petition seeks compensation for injuries allegedly related to Mathew’s receipt of the measles, mumps and rubella (“MMR”) vaccine, [which vaccine is included] on the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).

2. Mathew received his immunization on 7 July 2008.

3. The vaccine was administered within the United States or its trust territories.

4. Mathew sustained an encephalopathic event/Acute Disseminated Encephalomyelitis (“ADEM”) that was caused-in-fact by this vaccination.

5. Mathew suffered the residual effects or complications of his encephalopathic event/ADEM for more than six months after his vaccination.

6. There is not a preponderance of the evidence demonstrating that Mathew’s condition is due to a factor unrelated to his 7 July 2008 immunization.

7. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of Mathew as a result of his condition.

8. Accordingly, Mathew is entitled to compensation under the terms of the Vaccine Program. Therefore, [this Decision] should be entered [by the Undersigned] awarding the compensation described in paragraph 9 of this [Decision].

9. As soon as practicable after an entry of judgment reflecting [this Decision], and after Petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services [shall] issue the following vaccine compensation payments:

a. A lump sum of \$185,000.00 in the form of a check payable to Petitioners, as guardians/conservators of Mathew’s estate[, which] amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a); and

b. A lump sum of \$27,234.03 in the form of a check payable to Petitioners and Petitioners’ attorney, Andrew Donald Downing of Rhodes, Hieronymus, Jones, Tucker and Gable, P.L.L.C. for attorneys’ fees and costs. [Pursuant to General Order #9, Petitioners impliedly represent that they have not advanced any reimbursable litigation costs in pursuit of their claim.]

10. Payment made pursuant to paragraph 9 of this [Decision] [shall] be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

11. The parties and their attorneys further agree and stipulate that, except for any award for reasonable attorneys' fees and litigation costs, the money provided pursuant to this [Decision] [shall] be used solely for the benefit of Mathew as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

12. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardians/conservators of Mathew's estate under the laws of the State of Oklahoma. No payments pursuant to this [Decision] shall be made under Petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators or Mathew's estate. If Petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of Mathew Dylan Sanders at the time a payment pursuant to this [Decision] is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian/conservator of the estate of Mathew Dylan Sanders upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraph 9, Petitioners, in their individual capacity and as legal representatives of Mathew, on behalf of themselves, Mathew, and his heirs, executors, administrators, successors or assigns, do forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of Mathew, resulting from, or alleged to have resulted from, MMR, Prevnar, Varicella and/or Hep. A vaccinations administered on 7 July 2008, as alleged by Petitioners in a petition for vaccine compensation filed on or about 18 February 2009, in the United States Court of Federal Claims as petition No. 09-0098V.

14. If Mathew should die prior to receiving the payment described in paragraph 9(a), [the Stipulation] shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

15. [If the undersigned Special Master does not issue a Decision in complete conformity with the terms of the Stipulation between the parties, or in the event the Court of Federal Claims does not enter judgment in conformity with a decision that is in complete conformity with the terms of the Stipulation between the parties,] then the parties' settlement and their Stipulation shall be null and void at the discretion of either party.

16. This [Decision] expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

17. All rights and obligations of Petitioner hereunder shall apply equally to Petitioner's successors and assigns as legal representatives fo Mathew Dylan Sanders.

I find this conclusion reasonable, just and proper, and adopt these provisions as the Decision of this Court in awarding damages. Therefore, in the absence of the filing of a motion for review, filed pursuant to Vaccine Rule 23 within 30 days of this date, **the clerk shall forthwith enter judgment** in accordance herewith.

IT IS SO ORDERED.

s/ Richard B. Abell

Richard B. Abell

Special Master